

REMARKS

The present communication responds to the non-final Office action of November 22, 2006 in which the Examiner rejected claims 1-17. Claims 1, 6-7 and 10-13 were rejected under 35 U.S.C. § 102(b) as anticipated by U.S. Patent 5,407,713 ("Wilfong et al."). Claims 8-9 were rejected under 35 U.S.C. § 103(a) as unpatentable over Wilfong et al. in view of U.S. Patent 5,371,124 ("Cooke"). Claims 2-5 and 14-17 were rejected under 35 U.S.C. § 103(a) as unpatentable over Wilfong et al. in view of U.S. Patent 6,178,832 ("Mathur et al.").

Claims 1-17 and 22 are pending in the application. Claims 1 and 9 have been amended. Claim 8 has been cancelled. Claim 9 was amended to correct the claim dependency. Claim 22 has been added. No new subject matter has been added to the claims. Support for amended claim 1 and new claim 22 can be found in general throughout the specification and in particular, for example, at page 4, paragraph [0013].

The claim rejections are traversed in view of the amendments and for at least the reasons articulated below.

Reconsideration is requested.

Rejection under 35 U.S.C. § 102

Claims 1, 6-7 and 10-13 were rejected under 35 U.S.C. § 102(b) as anticipated by Wilfong et al.

Amended claim 1 is directed to a multi-layered plastic body for storing or conducting a medical, diagnostic, pharmaceutical or/and cosmetic product, the plastic body including a first layer made of a stress fracture resistant plastic material, and at least a second layer, connected to the first layer, and made of a plastic material which exhibits a lower resistance to stress fractures than the first plastic material, wherein the stress fracture resistant plastic material of the first layer is semi-crystalline.

Wilfong et al. discloses multilayered barrier structures having a gas barrier layer of a non-chlorine containing organic polymer which is substantially impermeable to oxygen gas, and

a moisture barrier layer of a mesophase propylene-based material. (Wilfong et al., col. 4, lines 58-63). The moisture barrier layer 14 of Willfong et al. includes a mesophase propylene-based material, such as mesomorphous polypropylene, mesopolymer blends, and/or mesocopolymers. (Willfong et al., col. 11, lines 17-20). Willfong et al. discloses that “mesocopolymers used in the moisture barrier layer 14 also exhibit enhanced properties over that of copolymers incorporating the same moieties with propylene in a crystalline form.” (Willfong et al., col. 11, lines 33-36). Willfong et al. discloses that crystalline form of polypropylene materials is “undesired” stating that:

[T]he coextruded multilayered barrier structure 10 according to the present invention should not be subjected to any treatment, such as orientation or stretching, at temperatures above 60°C. Specifically, the employment of such treatment techniques at temperatures above 60°C. would transform the mesophase form of propylene-based materials in the moisture barrier layer 14 of the multilayered structure 10 to predominantly *undesired crystalline form* of propylene-based materials.

(Wilfong et al., col. 19, lines 29-38) (emphasis added). Therefore, Willfong et al. does not disclose utilizing semi-crystalline material and even teaches away from using the semi-crystalline material of amended claim 1.

For at least the preceding reasons, the rejection of claim 1 under 35 U.S.C. § 102(b) should be reconsidered and withdrawn.

Rejection of the Dependent Claims

Because claims 6-7 and 10-13 depend directly from independent claim 1 and incorporate all the limitations of claim 1, they are allowable for the same reasons and, further, in view of their additional recitations.

Rejection under 35 U.S.C. § 103

Claims 8-9 were rejected under 35 U.S.C. § 103(a) as unpatentable over Wilfong et al. in view of Cooke.

Claim 8 has been cancelled. Claim 9 has been amended to depend directly from claim 1 and is further directed to stress fracture resistant plastic material that has a crystalline proportion of at least 30% by weight.

As stated in the Office Action, Willfong et al. “fails to disclose wherein the stress fracture resistant plastic material is semi-crystalline which has a crystalline portion of at least 30%.” As stated above in the discussion of claim 1, Willfong et al. teaches away from using the “*undesired crystalline form* of propylene-based materials,” in the moisture barrier layer 14. Moisture barrier layer 14 is the outer layer. (See Willfong et al., FIG. 1).

Furthermore, Cooke fails to remedy the fundamental deficiencies of Willfong et al. Cooke discloses a radiation resistant propylene polymer composition including a rosin material and a crystalline or semi-crystalline propylene polymer material having a crystallinity as determined by X-ray diffraction of from 20 to about 90%. Cooke does not disclose a multi-layered plastic body for storing or conducting a medical, diagnostic, pharmaceutical or/and cosmetic product, the plastic body including a first layer made of a stress fracture resistant plastic material, and at least a second layer, connected to the first layer, and made of a plastic material which exhibits a lower resistance to stress fractures than the first plastic material, wherein the stress fracture resistant plastic material of the first layer is semi-crystalline as in claim 1, nor does it suggest how Willfong et al. could be modified to meet every limitation of claim 1.

Therefore, neither reference alone or the asserted combination teaches, or provides motivation or an expectation of success to a person having ordinary skill in the art to choose the elements as recited in claim 1 or the additional recitations of claim 9.

Reconsideration and withdrawal of the § 103 rejection of claims 8-9 are requested.

Claims 2-5 and 14-17 were rejected under 35 U.S.C. § 103(a) as unpatentable over Wilfong et al. in view of Mathur et al.

Claims 2-5 and 14-17 depend directly or indirectly from claim 1.

As stated in the Office Action, Willfong et al.:

fails to disclose wherein the plastic body is at least part of a container, the container being one of a group comprising ampoules, catheters or components of a fluid handling system, wherein the plastic body comprises at least one opening sealed by a septum and wherein the septum is cast in.

(Office Action, page 4, paragraph 3).

Furthermore, as stated above in the discussion of claim 1, Willfong et al. teaches away from using the “*undesired crystalline form* of propylene-based materials,” in the moisture barrier layer 14.

Mathur et al. fails to remedy the fundamental deficiencies of Willfong et al. Mathur et al. discloses a reagent pouch for use in a modular automated diagnostic apparatus wherein a self-contained reagent pouch housing contains calibrants including tonometered calibrants in reagent pouches wherein each pouch wall includes multiple layers of materials wherein at least one layer is a thin, flexible glass material. (Mathur et al. Abstract). Mathur et al. does not disclose a multi-layered plastic body for storing or conducting a medical, diagnostic, pharmaceutical or/and cosmetic product, the plastic body including a first layer made of a stress fracture resistant plastic material, and at least a second layer, connected to the first layer, and made of a plastic material which exhibits a lower resistance to stress fractures than the first plastic material, wherein the stress fracture resistant plastic material of the first layer is semi-crystalline as in claim 1, nor does it suggest how Willfong et al. could be modified to meet every limitation of claim 1.

Therefore, neither reference alone or the asserted combination teaches or suggests or provides motivation or an expectation of success to a person having ordinary skill in the art to choose the elements as recited in claim 1 or the additional recitations of claims 2-5 and 14-17

Reconsideration and withdrawal of the § 103 rejection of claims 2-5 and 14-17 are requested.

New Claim

New claim 22 has been added, without adding new matter. Support can be found in general throughout the specification and in particular, for example, at page 4, paragraph [0013].

Since new claim 22 depends directly from amended claim 1, and incorporates all the limitations of claim 1, it is allowable for the same reasons and, further, in view of its additional recitations.

Conclusion

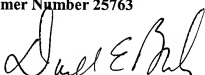
This response is being submitted on or before May 22, 2007, with the required fee of \$1,020.00 for a three-month extension of time, making this a timely response. It is believed that no additional fees are due in connection with this filing. However, the Commissioner is authorized to charge any additional fees, including extension fees or other relief which may be required, or credit any overpayment and notify us of same, to Deposit Account No. 04-1420.

This application now stands in allowable form and reconsideration and allowance are requested.

Respectfully submitted,

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